

21 October 2024

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email: legcon.sen@aph.gov.au

RE: SUBMISSION TO INQUIRY INTO AUSTRALIA'S YOUTH JUSTICE AND INCARCERATION SYSTEM

To the Committee Secretariat,

Please accept this as a submission to the Legal and Constitutional Affairs References Committee inquiry into Australia's youth justice and incarceration system. As an Aboriginal community controlled health service, our submission is largely focused on point (b) of the Inquiry's Terms of Reference:

b) the over-incarceration of First Nations Children.

We would also like to provide an overview from our experience in delivering the health service at the Alice Springs Youth Detention Centre, following the transition of this service from the Northern Territory Government Department of Health to Congress in September 2022.

We attach a list of specific recommendations for the Committee's consideration.

About Us

Congress is a large Aboriginal Community Controlled Health Service (ACCHS) based in Mparntwe (Alice Springs). We are one of the most experienced organisations in the country in Aboriginal health, a national leader in primary health care, and a strong advocate for the health of our people. Since the 1970s, we have developed a comprehensive model of primary health care that includes multidisciplinary clinical care; health promotion and disease prevention programs; and action on the social, cultural, economic and political determinants of health and wellbeing.

Congress delivers services to more than 16,000 Aboriginal people living in Alice Springs and remote communities across Central Australia including Ltyentye Apurte (Santa Teresa), Ntaria (Hermannsburg), Wallace Rockhole, Utju (Areyonga), Mutitjulu, Amoonguna, Kaltukatjara (Docker River), Yulara and Imanpa.

Previous submissions of relevance

Over many years, under the leadership of our Aboriginal Board Congress has made significant representations and submissions to all levels of government on the social, political, environmental and cultural influences on early childhood development that shape health and wellbeing outcomes across the life course.¹ This includes Congress' pivotal paper from 2011, *Rebuilding Family Life in Alice Springs and Central Australia: the social and community dimensions of change for our people*.² Congress' decades of work in this area is informed by an abundance of evidence that makes it clear that investing into early childhood, along with strengthening and supporting families, is crucial for shaping the trajectory of a child's life.

Congress made an extensive submission in November 2016 to the *Royal Commission into the Protection and Detention of Children in the Northern Territory*. This submission is publicly available on our website³ and provides the basis for much of our submission to this current Inquiry.

Responding to Terms of Reference b) *The over-incarceration of First Nations Children*

It is unacceptable that we are in this position, in 2024, where our children and young people are still significantly over-represented in custodial settings. Here in the Northern Territory, the Youth Detention Census shows that as of 29 July 2024, one hundred per cent of young people in detention in the NT were Aboriginal.⁴

Congress is a strong advocate for a public health approach to youth justice and for many years has put forward evidence-based solutions that support children and families to help prevent Aboriginal children and young people from becoming involved in the criminal justice system.

In our submission to the Royal Commission, Congress made 21 recommendations which still hold relevance. That submission outlined the following key areas that remain critical determinants of children and young peoples' risk of involvement in the youth justice system:

- Disadvantage and inequality
- Intergenerational trauma
- Early childhood development

¹ See, for example:

- <https://www.caac.org.au/wp-content/uploads/2023/11/Congress-priorities-for-A-Better-Safer-Future-for-Central-Australia-May-2023-FINAL.pdf>
- <https://www.caac.org.au/wp-content/uploads/2022/12/Congress-Submission-to-Indigenous-Women-Inquiry-December-2022-FINAL.pdf>
- <https://www.caac.org.au/wp-content/uploads/2022/05/2021-10-Congress-Submission-to-10-Year-Generational-Strategy-FINAL.pdf>
- <https://www.caac.org.au/wp-content/uploads/2022/05/Congress-NT-Education-Engagement-Strategy-FINAL-August-2021.pdf>
- <https://www.caac.org.au/wp-content/uploads/2022/05/Congress-Response-to-Protecting-Australias-Children-Discussion-Paper-FINAL.pdf>

² <https://www.caac.org.au/wp-content/uploads/pdfs/Rebuilding-Families-Congress-Paper.pdf>

³ <https://www.caac.org.au/wp-content/uploads/pdfs/Congress-Submission-to-NT-Royal-Commission-FINAL-as-submitted-1-November-2016.pdf>

⁴ <https://tfhc.nt.gov.au/youth-justice/youth-detention-centres/youth-detention-census>

- School education, and
- Alcohol.

Our proposals can also be found in our paper of May 2023, *Priorities for a Better Safer Future for Central Australia*:⁵

We urge the Committee to consider the following specific issues.

- **Social determinants of youth justice**

Many Aboriginal children and young people are happy, engaged with their families and culture, and prepared to make a positive contribution to their communities and to the Northern Territory as a whole. However, others come from backgrounds of profound disadvantage which are marked by intergenerational poverty, overcrowding and unemployment. Children and young people from such backgrounds are at higher risk of involvement in the child protection and youth justice system.⁶ However, as well as absolute poverty, societies that are more unequal have been shown to be more prone to violence and to have higher rates of children in need of child protection.⁷

Addressing issues of poverty, unemployment, overcrowding and inequality in the Northern Territory are foundational for preventing the involvement of Aboriginal children and young people in criminal justice system.

There is a strong relationship between school performance, rates of school retention, truancy and involvement in crime – a study in Victoria found that two-thirds of children and young people in custody had either been expelled or were disengaged from school.⁸ The importance of school engagement and performance has been made evident through the success of interventions which have improved performance and reduced involvement in crime.⁹

There is also a strong association between parental educational attainment and the educational and behavioural outcomes of their children.¹⁰ Improving adult literacy is critical to addressing the drivers of disadvantage, social inequality, poverty, poor school performance and incarceration. Congress has been a strong advocate over many decades for

⁵ <https://www.caac.org.au/wp-content/uploads/2023/11/Congress-priorities-for-A-Better-Safer-Future-for-Central-Australia-May-2023-FINAL.pdf>

⁶ Senate Select Committee on Regional and Remote Indigenous Communities (2010). *Indigenous Australians, Incarceration and the Criminal Justice System: Discussion paper prepared by the committee secretariat*. Canberra, Parliament of Australia; Jesuit Social Services (2013). *Thinking Outside: Alternatives to remand for children*. Richmond, Jesuit Social Services.

⁷ Wilkinson R and Pickett K (2009). *Violence: Gaining Respect. The Spirit Level: Why More Equal Societies Almost Always Do Better*. London, Allen Lane.

⁸ Jesuit Social Services (2013), *ibid*.

⁹ Weatherburn D, Jones C, Snowball L and Hua J (2008). "The NSW Drug Court: A re-evaluation of its effectiveness." *Crime and Justice Bulletin* 121(NSW Bureau of Crime and Justice Statistics).

¹⁰ Dubow, E. F., Boxer, P., & Huesmann, L. R. (2009). Long-term Effects of Parents' Education on Children's Educational and Occupational Success: Mediation by Family Interactions, Child Aggression, and Teenage Aspirations. *Merrill-Palmer quarterly* (Wayne State University Press), 55(3), 224–249. <https://doi.org/10.1353/mpq.0.0030>

measures to improve adult literacy for First Nations people. Please refer to our submission of March 2021 to the House of Representatives Standing Committee on Employment, Education and Training's *Inquiry into adult literacy and its importance*.¹¹

There is widespread community concern that poor housing and overcrowding is having a major negative impact on the ability of parents to care for and protect children, as well as their ability to ensure children get sufficient sleep to attend school the next day. This is clearly supported by evidence and needs to be addressed as a key social determinant of youth justice.

Parental alcohol and other drug (AOD) use and parental mental health should also be considered amongst the range of social determinants of youth justice. Harmful alcohol use by parents and carers is a key risk factor for child neglect¹² and is known to be associated with a lack of responsive care and stimulation in early childhood. Whilst there are significant social determinants of alcohol dependence, a substantial, immediate impact on the primary prevention of neglect can be achieved by effective alcohol supply reduction measures. This is described further below.

- **Domestic and Family Violence**

Adverse childhood experiences, including domestic and family violence (DFV), are a strong predictor for poor social functioning, impaired wellbeing, health risks and disease, and contribute powerfully to many major public health and social problems including higher levels of violence and antisocial behaviour.¹³ Disruptions to healthy neurodevelopment that can occur when a family is impacted by DFV, can lead to problems with the brain's executive functions such as impulsivity due to poor emotional self-regulation, problem solving, coping and decision-making skills.¹⁴

Much of the lateral violence that occurs within Aboriginal communities and families is related to a number of interrelated factors stemming from the colonisation of First Nations peoples. This, along with the intergenerational effects of family violence itself and the ongoing experience of racism and discrimination, underpins many health and wellbeing issues, including healthy development in early childhood, in Aboriginal communities.¹⁵

Congress has extensively addressed the epidemic of violence that impacts on Aboriginal women and families in our submission in December 2022 to the Senate Standing Committee

¹¹ See <https://www.caac.org.au/wp-content/uploads/2022/05/Congress-Submission-re-Adult-Literacy-5-March-2021.pdf>

¹² Australian Institute of Health and Welfare. (2021). National framework for protecting Australia's children indicators. Retrieved from <https://www.aihw.gov.au/reports/childprotection/nfpac>

¹³ Anda R F and Felitti V J. Adverse Childhood Experiences and their Relationship to Adult Well-being and Disease: Turning gold into lead. The National Council Webinar, August 27, 2012 2012 [cited 2016 22 March 2016]; Available from: <http://www.thenationalcouncil.org/wp-content/uploads/2012/11/Natl-Council-Webinar-8-2012.pdf>

¹⁴ Worling J R and Langton C M, Treatment of Adolescents Who Have Sexually Offended, in The Wiley Handbook on the Theories, Assessment and Treatment of Sexual Offending, Boer D P, Editor. 2016. p. 1245-1263.

¹⁵ Dockery A M, Do traditional culture and identity promote the wellbeing of Indigenous Australians? Evidence from the 2008 NATSISS, in Survey Analysis for Indigenous Policy in Australia: Social Science Perspectives, Boyd Hunter and Nicholas Biddle, Editor. 2012, Australian National University, Centre for Aboriginal Economic Policy Research

on Legal and Constitutional Affairs' *Inquiry into missing and murdered First Nations women and children*.¹⁶ We strongly encourage you to consider this submission in the context of the over-incarceration of First Nations young people.

- **Population-level approaches to alcohol availability**

Alcohol abuse is often linked to offending, and young Aboriginal people in detention are highly likely to have had issues with alcohol, including having been under the influence of alcohol at the time of the offence.¹⁷ Strategies to reduce offending rates should therefore include effective measures to reduce the availability and use of alcohol at a population level.

There is incontrovertible evidence that reducing the availability of alcohol, either by increasing its price, reducing the number of outlets, or reducing the hours of sale (particularly of take away alcohol) reduces consumption and alcohol related harm; it is also a highly cost effective intervention.¹⁸

The introduction of a Minimum Unit Price (MUP) for alcohol is particularly effective in reducing alcohol consumption and related harms most amongst disadvantaged populations and young people.¹⁹ In 2018, the Northern Territory introduced a Minimum Unit Price (MUP) of \$1.30 per standard drink to remove cheap and dangerous alcohol from sale. An independent evaluation concluded that the MUP was associated with significant decreases in the rate of alcohol-related assault offences; protective custody episodes; alcohol-related ambulance attendances; and assault-related hospital admissions. The MUP was not associated with any significant changes in tourism numbers or expenditure; or the number of liquor licences across the NT²⁰.

In this context, the current NT Government's plans to remove the MUP, and once again allow cheap and dangerous alcohol to be sold at as little as 30 cents per standard drink will inevitably lead to higher rates of youth involvement in the criminal justice system and even higher levels of incarceration.

- **Foetal Alcohol Spectrum Disorder**

Drinking at the time of conception and during pregnancy can lead to Foetal Alcohol Spectrum Disorder (FASD) which is associated with health and social problems throughout life, including learning difficulties, impaired ability to perform work tasks, increased chance

¹⁶ See <https://www.caac.org.au/wp-content/uploads/2022/12/Congress-Submission-to-Indigenous-Women-Inquiry-December-2022-FINAL.pdf>

¹⁷ Senate Select Committee on Regional and Remote Indigenous Communities 2010; Indig D, Vecchiato C, Haysom L, Beilby R, Carter J, Champion U, Gaskin C, Heller E, Kumar S, Mamone N, Muir P, van den Dolder P and Whitton G (2011). 2009 NSW Young People in Custody Health Survey: Full Report. Sydney, Justice Health and Juvenile Justice.

¹⁸ Babor T and Caetano R (2010). Alcohol: no ordinary commodity. Oxford, Oxford University Press.

¹⁹ Stockwell T, Auld M, Zhao J and Martin G (2012). "Does minimum pricing reduce alcohol consumption? The experience of a Canadian province." *Addiction* 107(5): 912-920.

²⁰ Taylor, N., et al., *The impact of a minimum unit price on wholesale alcohol supply trends in the Northern Territory, Australia*. *Aust N Z J Public Health*, 2021. **45**(1): p. 26-33

of developing mental illness, drug and alcohol issues and contact with the criminal justice system.

In line with key studies,²¹ reducing the prevalence of FASD in the Northern Territory should focus on broad-based public health measures to reduce alcohol consumption amongst the whole population, including women and men of child-bearing age. In addition, early childhood development programs are needed to offset the developmental deficits caused by alcohol use within the family, whether incurred before or after birth.

Congress has investigated these issues extensively in the past and we would encourage the Committee to review our many submissions, including our monthly analysis of publicly available data on alcohol related harm, which are available on our website.²²

- **Therapeutic secure care rehabilitation for young people**

For the small number of young people who need to be detained both for the protection of the community and for their own wellbeing, alternative models for youth detention are required. For example, the Diagrama Foundation focusses on the rehabilitation of young people through secure, therapeutic care and education preparing them for release and supporting them to gain the social and formal skills needed to obtain employment and re-integrate into their local community. The key to the success of this model is that the courts are willing to commit young people to an NGO-run rehabilitation service for long enough for a significant difference to be made in their lives. This usually requires at least 6 months as a minimum and often 12 months or more. The young people go to school within the rehabilitation service while getting therapeutic care and support as well. Youth detention should only be for short term stays when needed.

- **Youth support/diversion programs in remote communities**

Punitive detention has a negative effect on young people, through stigmatisation, disruption to positive family and community relationships, and exposure to the risk of further criminalisation. Diversion programs have been shown to lead to reduced drug and substance abuse and reoffending, especially if programs include culturally appropriate treatment and rehabilitation and Aboriginal community Elders or facilitators.

Youth support and diversion programs are needed in remote communities where young Aboriginal people live. One successful model that could be explored is the Back Track

²¹ National Indigenous Drug and Alcohol Committee (2012). Addressing fetal alcohol spectrum disorder in Australia. Canberra, Australian National Council on Drugs.

²² See, for example:

- <https://www.caac.org.au/wp-content/uploads/2023/11/Congress-Submission-re-NT-Draft-Alcohol-Plan-February-2023-FINAL.pdf>
- <https://www.caac.org.au/wp-content/uploads/pdfs/Congress-Submission-to-FASD-Senate-Inquiry-FINAL-for-submission-December-2019.pdf>
- <https://www.caac.org.au/wp-content/uploads/2024/10/Congress-analysis-of-Alice-Springs-alcohol-stats-October-2024.pdf>

program in Armidale, NSW providing caring, non-punitive, therapeutic treatment and education for its clients.

- **Family Responsibility Agreements**

Family Responsibility Agreements (FRAs) are a tool that ensures parents are accountable for the behaviour of their children. Effective FRAs must include non-criminal, but mandatory, consequences for parents when they are not effectively caring for their children, combined with support from family services. FRAs should include mandatory income management and/or the application of the BDR for parents who are struggling with addictions to alcohol and other drugs and/or gambling. The level of income management needs to be high enough to make a difference which is somewhere between 80 to 100%. The income management can be gradually reduced as families engage with family support services and AOD/mental health and other treatment services as needed.

- **Minimum age of criminal responsibility**

Congress released a statement on 14 October 2024 condemning the new NT Government's decision to lower the age of criminal responsibility from 12 years to 10 years old.²³ Holding children as young as 10 years old criminally responsible for their actions goes against the minimum age recommended by the UN Committee on the Rights of the Child.²⁴ Congress' position on the minimum age of responsibility being at least 12 years of age is based on evidence that children under 12 need to be with their families to have the greatest chance of successful rehabilitation. Such young children and their families can be supported with Multi-Systemic Therapy (MST) programs from local Aboriginal health services supporting the family and the young person to make the necessary changes. MST is already in use in parts of Australia and is particularly well-evidenced. It is an intensive family intervention for chronic juvenile offenders or young people with serious social and emotional issues, which has been shown to reduce offending by up to 70%.²⁵ In situations where it is necessary to remove the child under 12 then temporary kinship care or other types of Out of Home Care are far preferable to any form of detention.

- **Structural reforms of youth justice**

In our 2016 submission the *Royal Commission into the Protection and Detention of Children in the Northern Territory*, Congress made the recommendation that the responsibility for youth justice and youth detention remain with the Department for Territory Families (or its current equivalent), and therefore stays structurally separate from the Department of Corrections (or its current equivalent). This is on the basis that punitive approaches to

²³ <https://www.caac.org.au/news/lowering-the-age-of-criminal-responsibility-is-a-step-backwards-we-cant-risk-taking/>

²⁴ United Nations Committee on the Rights of the Child, General Comment 24 on children's rights in the child justice system, UN Doc CRC/C/GC/24 (18 September 2019), <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-24-2019-childrens-rights-child>

²⁵ McGinness A and McDermott T (2010). Review of Effective Practice in Juvenile Justice: Report for the Minister for Juvenile Justice. Manuka, ACT, Noetic Solutions Pty Limited; Senate Select Committee on Regional and Remote Indigenous Communities (2010). Indigenous Australians, Incarceration and the Criminal Justice System: Discussion paper prepared by the committee secretariat. Canberra, Parliament of Australia.

detention are well-established to be ineffective and expensive and the culture within the Department of Territory Families is more generally supportive for families rather than punitive with a workforce that is trained to understand the complexity of high needs families.

Responding to Terms of Reference g) *Any related matters*

- **Transition of health care to Aboriginal community controlled health services**

Since September 2022, Congress has been contracted to deliver the primary health care service to young people in custody at the Alice Springs Youth Detention Centre, following a transition of the service from the NT Department of Health. This followed a similar service transition in the Top End of health service delivery in Don Dale youth detention centre from NT Health to Danila Dilba Health Service.

In our experience in delivering this service, having an Aboriginal community controlled health service such as Congress and Danila Dilba in place in NT youth detention centres has a range of benefits for young Aboriginal people. Consistent staffing by a doctor and nurse allows time for young people to form relationships with the health workers, which then leads to better trust and ability to advance the therapeutic relationship. Young people who were previously refusing to attend the clinic are now more enthusiastic and willing to engage with Congress health workers. ACCHS are best placed to provide continuity of care beyond the custodial setting, through linking young people with community-based health services prior to release, and on release to support attendance at ACCHS services and clinics.

Congress would like to draw to the Committee's attention that currently, Medicare **does not** allow access to billable MBS items for ACCHS who provide health services in prisons and custodial settings. Congress therefore urges the Committee to consider making a recommendation to allow access for MBS for ACCHS providing primary health care services to incarcerated people. Being able to access MBS would allow ACCHSs to be able to provide a greater level of care, including mental health care and other in-reach supports.

- **Criminalisation of young people with neurodevelopmental disorders**

For young people in detention, Congress' data suggests that the vast majority (>80%) would have an undiagnosed or inaccurately diagnosed neurodevelopmental disorder, and often these young people have previously had involvement with Territory Families/child protection services. There are young people being criminalised for their disability whereby they cognitively could not understand the severity and consequences of their behaviour.

Our data mirrors the findings of the Bower study²⁶ of young people in youth detention in Western Australia, which found that almost 90 per cent of young people assessed had at

²⁶ Bower C, Watkins RE, Mutch RC, et al. Fetal alcohol spectrum disorder and youth justice: a prevalence study among young people sentenced to detention in Western Australia. *BMJ Open* 2018;8:e019605. doi:10.1136/bmjopen-2017-019605

least one domain of severe neurodevelopmental impairment, whilst 36 per cent received a FASD diagnosis. Congress is contracted by Territory Families to provide neurodevelopmental assessments to young people in detention or under court orders through our Child and Youth Assessment and Therapeutic Service (CYATS). Since the CYATS service was established in August 2018, Congress has completed 115 assessments for Territory Families on children and young people in care or detention or otherwise ordered by the courts.

Thank you for your consideration of these important issues. Congress is willing to provide representation to any upcoming public hearings to further contribute to this discussion. In the meantime, please contact Congress' Public Health Medical Officer, Dr John Boffa on john.boffa@caac.org.au or Health Policy Advisor, Emma Delahunty on emma.delahunty@caac.org.au if you would like more detail on the matters raised here.

Yours sincerely,

Donna Ah Chee
Chief Executive Officer



RECOMMENDATIONS

Addressing the social determinants of youth justice

1. Addressing issues of poverty, unemployment, overcrowding and inequality in the Northern Territory are foundational for preventing the involvement of Aboriginal children and young people in the criminal justice system.
2. That government ensures that all agencies delivering services to Aboriginal people, but especially those dealing with at risk children and young people in the criminal justice system use approaches that are trauma-informed and that validate and support Aboriginal culture and ways of being.
3. In considering ways to address DFV as a social determinant of youth justice, that a male cultural space ('Men's Shed') be piloted in Central Australia, incorporating male cultural leadership and therapeutic trauma-informed and healing focused care. Based on participatory action research principles, the pilot should investigate the possibility of the space including supported accommodation for mandated residential care and electronic monitoring for male perpetrators.

Population level approaches to alcohol availability

4. That the Committee accepts the evidence from Alice Springs and the NT, Australia and internationally that clearly shows that reducing the availability of alcohol, either by increasing its price, reducing the number of outlets, or reducing the hours of sale (particularly of take away alcohol) reduces consumption and alcohol related harm. These includes successful measures introduced in Alice Springs including the Minimum Unit Price (MUP), reduced takeaway hours, and use of Police Auxiliary Liquor Inspectors (PALIs) on sales outlets.

Raising the age of criminal responsibility

5. That the Committee urges state and territory governments to legislate to raise the minimum age of criminal responsibility to at least 12 years of age, and on that basis prohibit the detention of any child under 12 years of age.

Youth diversionary programs

6. That the Committee considers the benefits of well-resourced diversionary options for Aboriginal young people in contact with the criminal justice system, ensuring that access to diversion programs is provided in regional and remote areas and that Aboriginal Elders or mentors are made an integral part of the diversionary process.

Reform and transfer of youth detention centres

7. That the Committee urges state and territory governments to legislate to explicitly commit the youth detention system to a primary aim of therapeutic rehabilitation rather than punishment.
8. That for the small number of young people who need to be detained for their own wellbeing and the safety of the community, that the Committee considers the evidence for small, secure youth development centres focused on therapeutic approaches and staffed by Aboriginal cultural mentors,

therapists, social workers and others. Such centres may be run, if appropriate, by Aboriginal community controlled organisations.

9. That the Committee urges state and territory governments to ensure that the responsibility for youth detention remains (or is made) structurally separate from Departments of Corrections/ Departments of Justice or equivalents and instead placed under government agencies with a culture of therapeutic rather than punitive approaches, e.g. Department of Children and Families.

10. That the Committee recognise the benefits associated with transferring health care provided in custodial settings, especially where there are high populations of First Nations people in these settings to Aboriginal Community Controlled Health Services.

Family Responsibility Agreements

11. That the Committee considers that Family Responsibility Agreements provide a tool to ensure parents are accountable for the behaviour of their children, including non-criminal but mandatory consequences for parents combined with support from family services.